

COMMONWEALTH OF PENNSYLVANIA



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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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May 7, 1998

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

Via Federal Express

RM-9258

RE: Connecticut Department of Public  
Utility Control Petition for Amendment  
to Rulemaking Concerning Service  
Specific Area Code Overlay  
Docket No. DA98-743

Dear Secretary:

Enclosed please find an original and four copies of the Comments of State Advocates in Support of Allowing an Area Code Overlay for Mobile Carriers in the above-referenced matter.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Philip F. McClelland  
Assistant Consumer Advocate

Enclosure

cc: All parties of Record  
46754

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
	:	
Connecticut Department of Public	:	
Utility Control Petition for Amendment	:	DA 98-743
to Rulemaking Concerning Service	:	
Specific Area Code Overlay	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document,  
Comments of State Advocates in Support of Allowing an Area Code Overlay for Mobile Carriers,  
upon parties of record in this proceeding and in the manner listed below.

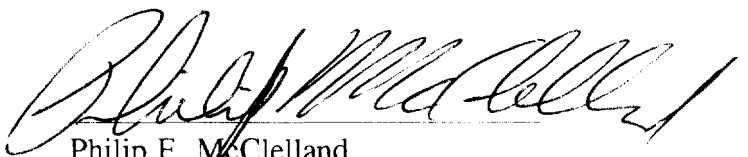
Dated this 7th day of May, 1998.

**SERVICE BY FEDERAL EXPRESS**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

RECEIVED

MAY 17 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Connecticut Department of Public :  
Utility Control Petition for Amendment : DA 98-743  
to Rulemaking Concerning Service :  
Specific Area Code Overlay :

COMMENTS OF STATE ADVOCATES  
IN SUPPORT OF ALLOWING AN AREA CODE  
OVERLAY FOR MOBILE CARRIERS

I. INTRODUCTION

The State Consumer Advocates ("State Advocates") listed below file these Comments in support of the Petition of the Connecticut Department of Public Utility Control for Amendment to Rule Making ("Petition") on March 30, 1998. On April 17, 1998 the Federal Communications Commission ("FCC" or "Commission") released a Public Notice at RM No. 9258 requesting public comment. The FCC summarized the Connecticut Department of Public Utility Control ("Connecticut") Petition as follows:

The Connecticut Department requests that the Commission amend its rule prohibiting technology-specific or service-specific overlays. The Connecticut Department states that the Federal Communications Commission (Commission) should revisit the rule because of: (1) the level of telecommunications competition currently experienced within the wireline industry; (2) the level of competition experienced within the wireless industry; and (3) the lack of competition experienced between the two industries in Connecticut. The Department states that competition is present within the wireline telecommunications industry in Connecticut, and within the wireless market. The Department asserts, however, that no competition exists between the wireline and wireless industries, and that it appears that

competition between the two industries will not exist in the near future. Until competition between the wireline and wireless industries exist, the Department argues, concerns regarding the anticompetitive effects of service-specific area code overlays are unwarranted.

Notice at 1. The Commission specifically requested comment concerning:

what circumstances, if any, have changed since the Commission originally prohibited technology-specific or service-specific area code overlays that would warrant a change in the rule. We seek comment on how service-specific overlays would affect number conservation, local number portability for both wireless and wireline carriers, number pooling, and any other relevant initiatives pertaining to telecommunications numbering resources.

Notice at 2.

State Advocates support Connecticut's proposal that the FCC should allow state commissions to authorize area code overlays specific to mobile service providers.<sup>1</sup> In support, State Advocates file these Comments.

## II. INTEREST OF STATE ADVOCATES

A group of state consumer advocates have joined to submit these Comments. Many of these State Advocates were created by state legislatures in order to represent consumers before state and federal regulatory agencies. The consumer advocates filing these Comments are as follows:

Missouri Office of the Public Counsel  
New Jersey Division of Ratepayer Advocate  
Illinois Citizens Utility Board

Pennsylvania Office of Consumer Advocate  
Connecticut Office of Consumer Counsel

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<sup>1</sup> While State Advocates may not support all of the conclusions offered by Connecticut in its petition, State Advocates support the relief requested. Notably, State Advocates are concerned about Connecticut's conclusion that: "Competition is present in the wireline telecommunications industry in Connecticut." Conn. Pet. at 7.

### III. COMMENTS

A. Mobile Service Overlays Should Be An Option Available To State Commissions In Order To Avoid The Consumer Hardships Created By Persistent Area Code Changes For Wireline Customers.

State Advocates encourage the FCC to allow state commissions to use area code overlays that would be restricted to mobile service providers or wireless carriers.<sup>2</sup> The need to allow such a service specific overlay arises from the frequency with which consumers are now

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<sup>2</sup> State Advocates suggest that it is reasonable to consider the classification of certain carriers into a separate area code, not as a distinction between wireline and wireless technologies, but as a distinction between mobile and fixed telecommunications services. The State Advocates anticipate that in the future consumers may also receive fixed telecommunications services at their homes through wireless technologies. Currently, however, the greatest use of wireless technologies occur with what the FCC terms Commercial Mobile Radio Service ("CMRS") carriers. Connecticut explains that CMRS carriers include cellular, Personal Communications Service ("PCS") providers and pagers. Conn. Pet. at 2 n.3. State Advocates propose that it is reasonable to apply area codes to a particular type of service, i.e. fixed versus mobile, regardless as to the technologies used. However, as CMRS carriers are frequently referred to as wireless carriers, and fixed service carriers are frequently referred to as wireline carriers, State Advocates will use these classifications in these Comments interchangeably.

experiencing the addition of area codes. Between 1961 and December, 1994 the number of assigned area codes increased from 118 to only 134; between December, 1994 to January, 1998 the assigned area codes increased from 134 to 235.<sup>3</sup> This accelerating addition of area codes was recently addressed by Mr. Alan Hasselwander, Chairman of the North American Numbering Council, to the Numbering Solutions 1998 Seminar. In that address he explained:

To say we have reached a crisis in numbering in the US is probably too strong a statement. But we are approaching a crisis, and one will occur if effective action is not taken now. Many states have and are facing a frequency of NPA exhaust unknown in the past, and commissions are taking the heat that goes with the costs imposed on consumers by number exhaust.

State Advocates submit that Mr. Hasselwander is correct that we are at least approaching a numbering crisis, if we are not already in one. The wireless overlay would be an effective means of resolving the need for additional area codes in many circumstances and provide relief for wireline consumers from continued area code charges.

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<sup>3</sup> Where Have All the Numbers Gone? Long-term Area Code Relief Policies and the Need for Short-term Reform, Economics and Technology, Inc. prepared for The Ad Hoc Telecommunications Users Committee and International Communications Association, March, 1998 at 3 (“ETI Study”).

State Advocates also propose that the cost of frequent area code changes upon fixed service consumers are substantial and could be avoided by the use of a wireless overlay in many instances. A change in a consumer's area code often requires notifying friends and businesses of that change, and also reprinting stationery, advertising, etc. If callers are not aware of a new telephone number, important calls may not be completed. Reprogramming calling data bases and alarm monitoring devices can also be expensive.<sup>4</sup> The cost of reprogramming network equipment for telecommunications carriers are also considerable. Thus, there are real costs imposed upon the public as a result of area code changes.

Consumers support using wireless overlay as a method of avoiding the additional inconvenience, confusion and expense associated with frequent NPA relief. In a recent proceeding before the Missouri Public Service Commission concerning area code relief for the 314 area code, many consumers volunteered that a wireless overlay would be an appropriate alternative. In that proceeding, 40.82% of letters received by the Commission and the Missouri Office of Public Counsel expressed interest in a wireless overlay. The testimony at public hearings on the exhaust of the 314 area code included many customer comments suggesting a wireless overlay and much questioning as to why this option was not available. As a result, State Advocates suggest that the FCC should reconsider its prior prohibition on mobile service overlays where such an overlay could avoid some of these costs.

B. Wireless Overlays Will Facilitate the States' Ability to Achieve Long-Term NPA Relief.

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<sup>4</sup> The ETI Study discusses these issues at greater length at 20 to 22.

In the recent Missouri case referenced above, it was established that wireless carriers accounted for approximately 30% of the assigned numbers in the NPA. Wireless overlays will allow the states to slow the rate of new code demand from existing NPAs. Based on specific carrier projections of 1998 and 1999 NXX code demand, the Missouri Office of Public Counsel developed a forecast of wireless NXX demand. The results of that forecast indicate that 49 NXX codes over that two year period could be saved by assigning additional wireless codes from a wireless area code overlay.<sup>5</sup>

Currently, wireline providers serve customers through facilities that are tied to a specific geographic location. CMRS providers are not bound by the traditional geographic servicing areas of incumbent local companies. Wireless carriers may provide service to their entire serving area from a single or a few locations within that area where they interconnect with the facilities of wireline providers. Wireless carriers are assigned NXX codes based upon those exchanges where interconnection occurs, but the use of those NXX codes is not limited to a single exchange. Wireless carriers have the ability to adjust their code requests once a geographic split boundary has been identified. Thus, wireless carriers have the opportunity to choose in which area code they will locate their NXX codes. This problem is aggravated by the rapid growth in availability and demand for

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<sup>5</sup> The Missouri Office of Public Counsel also determined that wireless carriers had actually used a large number of the NPA-NXX codes that had been assigned at the time of the study. Wireline carriers had used 386 of the NXX codes, while wireless carriers had used 160 of the NXX codes. Other NXX codes could not be assigned, e.g. NXX codes within the 000-199 blocks, leaving only 204 NXX codes available for assignment.

wireless technologies in urban areas and an increasing number of wireless providers and agents for these providers. Thus wireless providers may quickly deplete NXX codes available in a particular urban NPA by concentrating their NXX requests in that area. This can have the effect of quickly exhausting an area code soon after it is created. By allowing state commissions to adopt wireless overlays and assigning wireless NXX codes from that overlay, the FCC will promote the ability of states to ensure longer-term relief measures by extending the life of a particular geographic split while simultaneously allowing wireless carriers to concentrate their NPA-NXX requests in that same area.

C. As Mobile Carriers Lack The Ability To Conserve Telephone Numbers Through Local Number Portability Based Number Optimization Solutions, Mobile Service Overlays Are An Appropriate Response To The Need for Additional Area Codes.

It appears that much of the demand for additional NPA-NXX codes in the form of new area codes stems from the demand for new NPA-NXX codes by both the CLECs and the mobile or wireless carriers. State Advocates suggest that much of the demand by CLECs can be accommodated by the use of Local Number Portability ("LNP") - either by simply porting unassigned numbers to CLECs or by more broadly assigning blocks of numbers to CLECs, e.g. 1,000 number blocks. In this way, LNP can be used as a foundation to optimize the use of telephone numbers now available, and in some cases avoid the need to deploy additional area codes to be used by carriers that are LNP capable.<sup>6</sup>

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<sup>6</sup> In these Comments, State Advocates will not argue the extent to which LNP based number optimization measures can avoid the need to deploy new area codes in particular geographic areas. Certainly, where telephone numbers in an area code have been heavily used and few unassigned NPA-NXX codes remain, LNP based solutions may not be effective. Where these conditions do not exist, LNP based solutions may be successful in significantly extending the lives of current area codes. In either event, where mobile service carriers have not deployed LNP

However, LNP based solutions are only available for carriers that have deployed LNP technology. Wireless carriers have not deployed LNP in their networks and are not required to do so by the FCC until June 30, 1999.<sup>7</sup> Connecticut Pet. at 9. Because LNP based solutions are not usable by the wireless industry, this has often meant that new area codes are required - even if fixed service carriers could avoid additional area codes through various LNP based solutions. This inequality of technical capabilities will necessarily mean that the application of additional area codes to consumers served by wireline carriers can be driven simply because mobile carriers are unable to use LNP based numbering solutions.

In many respects, the exhaustion of telephone numbers has been predominantly driven by the growth experienced by mobile carriers. As a result, State Advocates suggest that the inability of wireless carriers to use LNP based numbering solutions should be accommodated, at least initially, by utilizing a new overlay code only for wireless or mobile services. This would allow new area codes to be used by those carriers which are largely driving area codes to exhaust, but have the least ability to conserve telephone numbers.

D. Mobile Service Providers Continue To Provide A Distinct Form Of Telecommunications Service From That Offered By Fixed Service Providers. Are

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technology in their networks, mobile service carriers will not be able to use such solutions.

<sup>7</sup> Moreover, the problem of wireless carriers not deploying LNP until mid-1999 is further exacerbated by the wireless carriers' proposals to further extend this deadline. Connecticut Pet. at 9 n.11. Such additional delay will be discussed at further length below.

Not Competing For The Same Service, And Different Area Code Options Should Be Allowed For Fixed Versus Mobile Carriers.

1. Lack Of Local Competition.

The Connecticut Petition asserts correctly that no competition exists between wireless and wireline service providers. Connecticut Pet. at 6-9. State Advocates support this conclusion and submit that the same situation exists in other states as well. While there is growing competition within the wireless industry, but very little competition within the wireline industry in some states, little or no competition exists between these two types of service providers.

This fact is important considering that the FCC has based its earlier prohibition against an area code for wireless service providers based upon the assumption that such a service specific overlay would discriminate against wireless service providers. In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC Rcd. 4596, 4608 (1995) ("Ameritech Order"); In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19518 (1996) ("Second Report and Order"). The reasoning behind these rulings appears to have been that placing wireless carriers into a different area code than that used by wireline carriers would discourage consumers from switching their service from a wireline to a wireless carrier. In the years following those Orders, it has become increasingly apparent that there is little, if any, local service competition taking place between wireless and wireline carriers. Currently, wireless is not a good substitute for wireline service. Customers do not choose between wireless and wireline services. Generally, wireline service remains the basic service of choice for residential and business customers, while wireless is chosen

as an additional service to be used when a consumer is away from home or business. Thus, the advantage that was to accrue to consumers in the form of competition between wireline and wireless providers, has not occurred. Even so, the restrictions imposed by the FCC have created another disadvantage for wireline consumers, i.e. the proliferation of area codes.

2. Prohibition of Wireless Overlays Has Harmed Local Competition.

Moreover, State Advocates share the FCC's concern that numbering administration, as well as other regulatory policies, should encourage competition for local telephone service. However, the FCC's prohibition against a wireless overlay has served to retard the growth of local competition - not promote it. State Advocates emphasize that the prohibition against a wireless overlay has served to delay the provision of area code relief to many wireline CLECs where NPA-NXX codes are otherwise unavailable. The application of a wireless overlay would provide wireless carriers additional NPA-NXX codes and allow CLECs a greater opportunity to use NPA-NXX codes otherwise available in existing NPAs. Not being able to apply a wireless overlay, state commissions have been left with the options of splitting area codes into ever smaller geographic areas or applying area code overlays for the required use of wireline carriers.<sup>8</sup> Having only these options available, area code relief has often taken considerable time to implement. Determining where an area code should be split has often been difficult and resulted in delays in implementing such geographic splits. Applying an area code overlay also frequently requires delay due to the need to implement 10 digit dialing for all calls and results in competing CLECs receiving NPA-NXX codes in a new, more

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<sup>8</sup> In many instances, state commissions have exempted wireless carriers from having to change their telephone numbers to the new area code. Thus, wireless carriers have often been treated preferentially and avoided the hardships imposed upon wireline consumers.

unfamiliar overlay area code. Where CLECs require new NPA-NXX codes to begin competing, this has often meant delays in the local competition that the FCC wishes to promote.

3. Wireless Consumers Are Not Affected By Many Of The Same Concerns Associated With Area Code Changes For Wireline Consumers.

State Advocates suggest that allowing state commissions to choose wireless overlays to provide further NPA-NXX codes to wireless providers would be an appropriate method to address the competitive concerns of all parties affected. A wireless overlay should allow wireless carriers to receive NPA-NXX codes needed by mobile carriers as that industry continues with its rapid growth.

State Advocates suggest that the delays related to splitting existing area codes and uncertainty related to the imposition of a new and unfamiliar area code overlay should not be considered as factors discouraging the application of new overlay area code for wireless carriers. Simply applying a wireless overlay would not raise the problems now encountered with a geographic split. While the customers of landline carriers are often concerned that they should not be forced to change an area code that is closely associated with a particular geographic region, a similar concern should not apply to wireless customers. Wireless carriers frequently use local calling areas and rate centers which are far broader in scope than that used by wireline carriers. Furthermore, wireless customers, because they are often charged for calls that terminate to their telephone number, are frequently not as concerned that their telephone number should be widely known or called at all.

E. Further Delay In Local Number Portability For Mobile Service Providers Will Exacerbate These Problems, And Demonstrates A Lack Of Competition.

The lack of competition between wireline and wireless carriers is most clearly demonstrated by the wireless industry's attempt to delay their use of Local Number Portability. On November 24, 1997, the Cellular Telecommunications Industry Association ("CTIA") requested that the deadline for wireless carriers to provide LNP be delayed from June 30, 1999 to March 31, 2000. Connecticut Pet. at 9 n.11. State Advocates suggest that the fact that the wireless industry wishes to delay its ability to port telephone numbers from incumbent LECs to wireless carriers until 2000 indicates that wireless carriers are not intent upon competing in that market and that little competition in that market exists now or will occur any time soon. Moreover, CTIA has also proposed in a separate petition that the FCC should delay LNP for the Personal Communications Service industry for five years. Telecommunications Reports, FCC Seeks Views on Request To Delay PCS Number Portability, January 26, 1998 at 29. If this Petition were approved, the PCS industry would not be required to port a number from wireline carriers until 2004.

Such extended delay in LNP deployment will make the optimal use of current telephone numbers all the more difficult to achieve. Delay will also restrict the telecommunications industry's efforts to avoid the proliferation of area codes into the indefinite future. These LNP delay requests make it all the more appropriate and essential to allow the use of wireless area code overlays.

F. The Wireless Industry's Efforts To Have The FCC Approve Calling Party Pays Supports The Use Of A Wireless Overlay Area Code.

As the Connecticut DPUC explains, a separate area code for wireless service will be particularly appropriate if the "Calling Party Pays" initiative of the Commercial Mobile Radio Service carriers is endorsed by the FCC. Com. Pet. at 9-10. On October 23, 1997, the FCC released a Notice of Inquiry concerning whether the FCC should endorse the concept of Calling Party Pays for Commercial Mobile Radio Service carriers. As the FCC explains: "CPP is a service option that some cellular, paging, and Personal Communications Service (PCS) providers offer whereby the party placing the call or page pays the airtime charge, and any applicable charges for calls transported within the LECs' Local Access and Transport Areas." In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, October 23, 1997, ¶ 3. The FCC notes that: "Some State regulatory agencies have required carriers to implement various techniques to inform the calling party that the call being placed is a toll call. These techniques include: the use of 1+ dialing; distinct NXX codes for CPP subscribers; prerecorded branding statements informing the caller of the charges prior to completing the call; and certain types of tones." Id. at ¶ 20. If Calling Party Pays is implemented, it would also be a valid identifier for the mobile telephone to be identified with a unique area code as well. This proposed use of Calling Party Pays strengthens the logic in favor of allowing a wireless overlay.

G. The FCC Should Eliminate Any Requirement For 10 Digit Dialing Related To A Wireless Area Code Overlay.

In the Connecticut Petition, the question of whether consumers in the geographic region covered by a wireless area code overlay would have to use 10 digit dialing when a wireless

overlay was applied was not explicitly addressed.<sup>9</sup> In the Second Report and Order, the FCC determined that whenever an area code overlay would be selected by a state commission all customers would be required to use 10 digit dialing. Second Report and Order at 19518. This was based upon a finding that carriers receiving NPA-NXX codes in the area code overlay should not operate at a competitive disadvantage to carriers with NPA-NXX codes in the preexisting area code. Id. As State Advocates have argued above, such competition does not exist between the wireline and wireless industries. As a result, State Advocates propose that, if the FCC approves of the use of a wireless overlay, it should also allow both wireline and wireless customers having telephone numbers in the geographic area covered by the wireless overlay to continue using 7 digit dialing if previously available.

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<sup>9</sup> The Connecticut Petition explains that Connecticut has created an industry task force and asked that body to report to Connecticut on its findings as to whether 7 or 10 digit dialing should occur with a wireless overlay. Conn. Pet. at 3.

### III. CONCLUSION

State Advocates Request that the FCC approve the Connecticut Petition and adopt the Comments set forth above.

Respectfully submitted,

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Dated: May 7, 1998  
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